

No. 15-55446

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMERICANS FOR PROSPERITY FOUNDATION,
Plaintiff-Appellee,

v.

KAMALA HARRIS,
in her official capacity as the Attorney General of California,
Defendant-Appellant.

On Appeal from the United States District Court
for the Central District of California
Case No. 2:14-cv-09448-R-FFM

**DECLARATION SUPPORTING RESPONSE OF PLAINTIFF-APPELLEE
TO DEFENDANT-APPELLANT'S MOTION
TO STAY TRIAL PROCEEDINGS PENDING APPEAL**

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*Counsel for Plaintiff-Appellee
Americans for Prosperity Foundation*

I, Derek L. Shaffer, declare as follows:

1. I am a Partner at Quinn Emanuel Urquhart & Sullivan, LLP and counsel for Plaintiff-Appellee Americans for Prosperity Foundation. I submit this declaration in support of the Response of Plaintiff-Appellee to Defendant-Appellant's Motion to Stay Trial Proceedings Pending Appeal. I am competent to testify to the matters in this declaration, and, if called, would so testify.

2. Attached as **Exhibit 1** is a true copy of excerpts of the November 3, 2015, deposition of Ms. Kevis Foley, the recently retired Registrar of Charitable Trusts for the Attorney General's Office of the California Department of Justice. Ms. Foley was designated as the Attorney General's 30(b)(6) witness regarding the Attorney General's policy surrounding Schedule B, including as to confidentiality.

3. Attached as **Exhibit 2** is a true copy of excerpts of the October 29, 2015, deposition of Mr. Steve Bauman, a supervising investigative auditor for the Attorney General's Office of the California Department of Justice. Mr. Bauman was designated as the Attorney General's 30(b)(6) witness regarding the Attorney General's use of Schedule B for purposes of regulatory enforcement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 5, 2015, in Washington, D.C.

/s/ Derek L. Shaffer
Derek L. Shaffer

Counsel for Plaintiff-Appellee
Americans for Prosperity Foundation

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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AMERICANS FOR PROSPERITY
FOUNDATION,

Plaintiff,

v.

KAMALA HARRIS, in her Official
Capacity as Attorney General of
the State of California,

Defendant.

-----X

VIDEOTAPED DEPOSITION OF

KEVIS FOLEY

VIDEOTAPED 30(B)(6) DEPOSITION OF KAMALA HARRIS

Sacramento, California

November 3, 2015

9:30 a.m.

Reported by:
WENDY E. ARLEN
Job No: 41421

KEVIS FOLEY

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Kevis Foley

November 3, 2015

9:30 a.m.

Videotaped deposition of KEVIS FOLEY,
individually and as a 30(b)(6) witness, held
at the offices of DOWNEY BRAND, 621 Capitol
Mall, 18th Floor, Sacramento, California,
pursuant to Notice, before WENDY E. ARLEN,
CSR 4355, RMR, CRR within and for the State
of California.

KEVIS FOLEY

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A P P E A R A N C E S

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KEVIS FOLEY

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A P P E A R A N C E S (Cont'd)

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By: Kevin A. Calia, Esq.
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ALSO PRESENT:

Matt Miller, Videographer

1 Q. Do you have a sense of how many students came
2 through the Registry over the course of time that you
3 were there, the ten years you were there?

4 A. I don't know. I would say at least 50. That
5 would be an estimate.

6 Q. Did you ever alert the Beyond Baroque
7 Foundation yourself or do you know of anyone from the
8 Registry alerting the Beyond Baroque Foundation to
9 the fact that their Schedule B for 2009 had been
10 inadvertently posted on the Web site?

11 A. No.

12 Q. When we look back at your response to
13 Interrogatory 18 that we were looking at on
14 Exhibit 15, were you conscious of the fact that there
15 were other instances beyond those two where a
16 Schedule B that ought to have been confidential was
17 in fact inadvertently posted on the public Web site
18 for whatever period of time?

19 A. Only in the general sense that I know I had
20 to fix them, but I couldn't tell you who they were
21 or -- you know what I mean? It was like part of the
22 daily -- of the daily work. I wouldn't make a note
23 of it. It was not a, you know --

24 These were -- I believe these were the only
25 two we could actually pin down and had some sort of

1 documentation on them.

2 Q. I take it for the other instances you did not
3 alert the other charities that their Schedule B's had
4 inadvertently been posted on the Web site for
5 whatever period of time.

6 A. No.

7 Q. You had not done so, correct?

8 A. No.

9 Q. Let me, if I could, show you what we'll mark
10 as the next numbered exhibit.

11 (Deposition Exhibit 38 marked for
12 identification.)

13 Q. MR. SHAFFER: Am I correct that this is a
14 listing of the individuals at whatever point in time
15 who were within the Registry and authorized to have
16 access to Schedule B's?

17 A. Yes.

18 Q. Do you know what snapshot in time this was
19 taken at?

20 A. Oh, let's see. It's fairly recently because
21 most of these people -- there's a couple that are
22 gone now that were here, you know, when I left. So I
23 would say it was probably -- I'm not sure. Within
24 the last -- within 2015 whenever we submitted the
25 information as part of your interrogatories.

1 Q. Was there any system by way of a log or
2 otherwise for determining who had -- basically had
3 access to or checked out a particular confidential
4 Schedule B at a particular point in time?

5 A. Well, I'm not sure what you mean by checked
6 out. We don't check out. I mean, anyone that had
7 access to the system could look on the record and
8 look at the documents on the record, but there is no
9 like -- if someone went to view it on there, there is
10 no kind of log of that. It doesn't do that kind of
11 audit.

12 Q. Is there any limitation on someone
13 downloading the Schedule B?

14 A. If they did what?

15 Q. Downloading. Downloading the Schedule B,
16 someone within the Registry.

17 A. You mean like opened it up and saved a file
18 onto their desktop?

19 Q. Correct.

20 A. No.

21 Q. Is there any limitation to them printing a
22 hard copy?

23 A. No, not for internal staff.

24 Q. Is there any limitation on how they treat and
25 dispose of a hard copy once it's been printed?

1 A. Yes, we have shred boxes all around the
2 Registry for confidential information.

3 Q. But how would you make sure that a particular
4 hard copy once printed was in fact put in a shred box
5 as opposed to carried out of the office in a
6 suitcase?

7 A. We wouldn't. I mean, I don't know of any
8 particular -- we don't have any -- no one gets
9 frisked when they walk out the door and leave work,
10 if that's what you're asking.

11 Q. I'm asking something else. Were there
12 instructions given to people that they were not
13 permitted to take a hard copy of a Schedule B outside
14 the Registry with them?

15 A. Well, yes. They're not take to take any
16 information outside of the Registry that they work on
17 in the Registry. All documents stay in -- stay in
18 the Registry office.

19 Q. Where is that memorialized?

20 A. Pardon?

21 Q. Where is that memorialized?

22 A. It's part of their training. They sign
23 confidentiality agreements when they all start
24 working.

25 Q. I'm sorry. I haven't seen any

1 confidentiality agreements that specify they cannot
2 take documents to work from home, for instance. Is
3 there any specification?

4 A. I don't know. I don't think there's anything
5 written in like our office procedures. Not that I
6 can think of. I would have to go back through our,
7 you know, procedures, but there is no reason for
8 anyone to take any documents home to work. All the
9 work is done in the office.

10 Q. Well, what would prevent, say, an auditor
11 from taking a Schedule B with him into the field or
12 into another office?

13 MS. GORDON: Objection, calls for
14 speculation.

15 THE WITNESS: I can't speak to what the
16 auditors do. They're not in my office.

17 Q. MR. SHAFFER: Do you know of anything that
18 would prevent the auditor from taking a hard copy
19 with them outside of the Registry?

20 A. They don't come to the Registry. They have
21 access to the system in their computers, and we don't
22 have auditors that work in the Registry.

23 Q. Do you know of anything that would prevent
24 them from taking the Schedule B with them in the
25 world wherever they may go?

1 A. No.

2 Q. Did you ever provide any instructions to any
3 auditor that the Schedule B needed to be treated as
4 confidential by them?

5 A. Some of them -- well, I can't say for -- I
6 don't do the training for the auditors. Their senior
7 assistant Attorney Generals would have trained them
8 about confidentiality of the documents. So I can't
9 say -- I didn't personally tell them these are
10 confidential. They -- I would have to say they know
11 that. It's part of their training that they received
12 in the office.

13 Q. But if they say they didn't get that
14 training, you're not in any position to contradict
15 them, are you?

16 A. That would be correct.

17 Q. And did you ever speak to the person who is
18 responsible for their training to ask whether they
19 were being trained in the confidentiality of Schedule
20 B's?

21 A. Not specifically, no.

22 Q. Did anyone from your office ever ask that
23 specifically and report to you about it?

24 A. I'm not sure. Anyone in the office, like
25 someone that works for me asked whether the auditors

1 have been trained? Is that what you're saying?

2 Q. Correct. Did they ever indicate to you that
3 they had undertaken an inquiry into that question and
4 obtained an answer one way or the other?

5 A. Not that I recall.

6 Q. Did you ever ask an auditor, Have you been
7 trained in the confidentiality of the Schedule B's?

8 A. I don't believe I -- not to my recollection.
9 It's not to say I never did, but not that I recall.

10 Q. What prevents someone else from the Attorney
11 General's office from coming to the Registry and
12 asking to review a Schedule B, if anything?

13 A. Well, the doors to the Registry have
14 separate -- are separately secured. The regular
15 doors are not in the office. The badge access is
16 only -- the Registry is only accessible to Registry
17 staff.

18 So they would have to have knocked on the
19 door and asked to get in. I've never had anyone do
20 that trying to look at Schedule B's that didn't --
21 didn't work in the Registry.

22 Q. Well, have you ever had someone who didn't
23 work in the Registry come into the Registry and want
24 to be inside the Registry? Has that ever happened?

25 A. Well, sure. I mean, there's been -- we have

1 Schedule B information.

2 A. That's correct.

3 Q. Do you know of them ever doing a specific
4 cyber security audit of the Registry?

5 A. Not of the Registry. Our servers are housed
6 in the same place all the criminal ones are. So they
7 would all be done by them.

8 Q. Do you know of any specific audit that
9 extended to the information that the Registry is
10 uploading to the backend of its database or to the
11 public Web site?

12 A. Not specific. You would have to ask them
13 again. I don't know. They are auditing and doing
14 security improvements all the time.

15 Q. When you say all the time, you don't mean
16 literally all the time.

17 A. All the time. I mean every day.

18 Q. Every day.

19 A. Every minute probably.

20 Q. And what is that based on?

21 A. Based on just e-mails that come out from them
22 about what they're doing, upgrades to the security,
23 you know, just from knowing what they do over at the
24 data center.

25 Q. And your sworn testimony is their account of

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1 it is they're doing it literally every minute?

2 A. I would not swear that in my testimony. Just
3 from what I've seen it's an ongoing event. That's
4 their job.

5 MR. SHAFFER: Let me show you what we'll mark
6 as Exhibit 55 to today's deposition.

7 (Deposition Exhibit 55 marked for
8 identification.)

9 Q. MR. SHAFFER: Do you recognize this document,
10 Ms. Foley?

11 A. Yes.

12 Q. Am I correct that that's basically -- well,
13 let me refer to it by its title. It's, as I
14 understand, the "Incompatibility Statement of the
15 Department of Justice"; is that correct?

16 A. Yes.

17 Q. This extends throughout the California
18 Department of Justice?

19 A. As far as I know, yes.

20 Q. Is this provided to individual personnel at
21 the Registry?

22 A. Yes.

23 Q. When they start essentially?

24 A. Yes.

25 Q. And am I correct that if you turn to the

1 second page, number 8 -- let me just read it into the
2 record in its entirety.

3 "Divulging confidential information,
4 data, or records of the Department of
5 Justice, to any person to whom issuance of
6 such information, data, or records has not
7 been authorized, or divulging or making use
8 of any records of the Department of Justice
9 for a mailing list or for any other purpose
10 without proper authorization."

11 And that's among the prohibited activities,
12 correct?

13 A. Yes.

14 Q. You understand that to extend to the
15 divulging of a Schedule B?

16 A. Yes.

17 Q. Does it extend to the inadvertent divulging
18 of a Schedule B?

19 A. I don't know.

20 Q. Have you ever obtained anyone's opinion on
21 that?

22 A. No.

23 Q. Do you know of any consequence for a
24 violation of the provision that we were just looking
25 at, provision 8 or any of the other provisions?

1 A. Consequences? Could be state disciplinary
2 process through the department if it was -- depending
3 on what the violation was and whether it was
4 repetitive, how serious it was. I've never
5 personally dung anyone on that. So...

6 Q. Do you know of anyone being dung on it by
7 anyone?

8 A. No, not offhand.

9 Q. Do you know of anyplace where it's written
10 down what the penalties would be for violation of one
11 of these prohibitions?

12 A. I do not off the top of my head. It's
13 possible it's in -- the department's got a lot of
14 procedures and policies and how they're implemented.
15 Probably in there somewhere.

16 Q. You don't recall reviewing that in your time
17 at the Registry.

18 A. No.

19 Q. You don't recall providing that to anyone in
20 your time at the Registry.

21 A. No, only in -- no, not really, no.

22 Q. Now, apart from what we reviewed in terms of
23 the confidentiality policy and the training documents
24 we looked at on that, do you know of any other
25 memorialization of what the do's and don't's or

1 penalties are associated with Schedule B
2 confidentiality policy?

3 A. You mean for violations of it or the policy
4 itself?

5 Q. Let's break it out. As to the policy itself,
6 the contours of it, the application of it, the
7 implementation of it, do you know of any piece of
8 paper beyond what we've reviewed today? Can you
9 think of any?

10 A. No, other than there could be occasional
11 e-mails directly to a staff person, but, I mean, off
12 the top of my head, I can't think of one.

13 Q. In terms of how individual employees need to
14 comply with the confidentiality policy, what they can
15 and cannot do consistent with that, do you know of
16 anyplace where that is written down outside of the
17 training procedures that we looked at today?

18 A. No, not off the top of my head.

19 Q. In terms of what the theoretical or actual
20 penalties are for violating the confidentiality
21 policy, do you know of anyplace where that is written
22 down?

23 A. Again, not off the top of my head.

24 Q. Do you recall having seen any document like
25 that that says if you violate the confidentiality

1 policy you may be subject to the following penalties?

2 A. I believe there is one somewhere. I just --
3 I can't think of where it is off the top of my head.
4 So it's probably in another one of the forms that we
5 sign when we -- when they hire people.

6 Q. You didn't create any such document, did you?

7 A. I didn't create. I'm not the one that gets
8 the employees to sign it. So...

9 Q. You didn't revise any such document, did you?

10 A. No.

11 Q. You didn't disseminate any such document, did
12 you?

13 A. No.

14 Q. Let me, if I could, get you to walk us
15 through the Registry Web site itself, the public
16 facing Web site, so that we can understand how that
17 operates in practice. To do that, we may need to
18 employ some technology that will project onto the
19 screen what we have on the computer from the Web
20 site.

21 A. Okay.

22 MR. SHAFFER: I tell everyone Ms. Thomas is
23 always indispensable to me, but never more so than
24 right now. She'll be our navigator through this.

25 Q. But am I correct, Ms. Foley, that what we're

1 looking at now is the home page basically of the
2 Registry's Registry, the publicly available, public
3 facing Web site where you can search the publicly
4 available documents?

5 A. This is the home page for the verification.
6 It's not what I would consider the home page for the
7 charities Web sites.

8 Q. Okay. I appreciate that. It's the home page
9 for the verification, and I take it what you mean by
10 that is this is where members of the public can go to
11 review the specific documents to verify the bona
12 fides of a particular charity.

13 A. Yes.

14 Q. And am I correct that those are all different
15 search mechanisms that the member of the public can
16 use to enter the Web site to get information on a
17 particular charity?

18 A. Yes.

19 Q. So for illustration, why don't we just look
20 at Americans for Prosperity. There we go. The
21 search takes a little while.

22 A. Only if you search by name. If you search by
23 a number, it's fast.

24 Q. And that would be the registration number,
25 that's the fastest way to search?

1 A. Okay. I believe you.

2 Q. Now, how did you say we'd be able to know if
3 there was a delinquency for 2006?

4 A. Well, the whole record would be delinquent.
5 So up here there's a status. It says registration
6 status is delinquent.

7 Q. And my only point, I guess, is, and I just
8 want to confirm it, that won't differentiate whether
9 the delinquency comes from, whether it's the 2006
10 year as opposed to the 2013.

11 A. That's correct. You would have to look --
12 what else is on this page that -- see, there's no
13 annual -- I don't see any annual renewal information.
14 There should be another box that's not showing.

15 Q. Annual renewal?

16 A. Yeah, that would be the information from the
17 RRF's and you can see which years was filed and which
18 were not accepted. It looks like -- because these
19 people have not filed anything since two thousand --
20 look down here. Yeah, there should be information on
21 the RRF panel. I don't know why there's none of it
22 showing up there.

23 Q. I'm sorry. The RRF panel.

24 A. Yeah. Well, go back up where it says -- see
25 that little black line that says annual renewal

1 information?

2 Q. Yeah.

3 A. There should be a whole block of information
4 in there for each year's filing.

5 Q. Could that be a function of the fact that
6 there is this delinquency, according to the Registry
7 and --

8 A. No.

9 Q. -- information is still outstanding?

10 A. No, it should show up on there. I don't know
11 why it's not.

12 Q. Now, have you ever yourself gone through the
13 Web site to see if you can find confidential Schedule
14 B's that are available through the Web site?

15 A. No.

16 Q. Have you ever asked someone to do that?

17 A. Have I ever what?

18 Q. Asked someone to do that.

19 A. No, I don't even know -- you mean just
20 randomly put in numbers and put in their documents --
21 we don't have time to sit around doing that.

22 Q. Well, have you ever asked anyone to spend an
23 hour just to see if they find any Schedule B's on
24 there that shouldn't be on there?

25 A. No.

1 Q. Well, would you be concerned if it turned out
2 that one such Schedule B was on the Web site that was
3 meant to be kept confidential?

4 A. Would I be surprised? No, I would be
5 disconcerted, but it wouldn't surprise me. If you
6 searched all, you know, 600,000 documents, it's
7 possible there's one out there that shouldn't be
8 public.

9 Q. What if you found a dozen? Would that be
10 surprising or concerning to you?

11 A. Again, I would have to look at the individual
12 cases and see what they were, how old they were, what
13 they were from.

14 Q. If there were hundreds of them.

15 A. Hundreds I might be concerned about.

16 Q. If there was well upwards of a thousand,
17 would you be concerned about that?

18 A. Yes.

19 Q. Let me offer to you what I will represent to
20 you and to counsel is not an exhaustive sampling, but
21 through the best means available to us in part to
22 search through the actual documents without looking
23 at what we consider to be and we understand
24 California says it treats as confidential Schedule B
25 information, we through a team of attorneys who spent

1 no more than seconds looking at what appeared to be
2 unredacted Schedule B's that were improperly posted
3 in violation of the confidentiality policies. There
4 was no scrutiny of individual names and addresses,
5 just enough to determine that, yes, indeed, these are
6 confidential Schedule B's that are on the Web site in
7 violation of the policy.

8 I don't expect you to testify to that,
9 Ms. Foley. I'm going to pass you the document that
10 we have reflecting more than 1400 such instances.
11 I'd ask that it be marked as the next numbered
12 exhibit, and so that we don't all stay here all past
13 when we want to be here, I would ask you, Ms. Foley,
14 to pick out of there at random just a few of these
15 charities. We'll go look at them and whatever the
16 fastest way possible is, and we will very briefly
17 gaze upon them to see if in fact these are unredacted
18 Schedule B's that are available publicly on the Web
19 site in violation of the confidentiality policy.

20 THE WITNESS: Okay.

21 MS. GORDON: I will just reserve the right
22 obviously to find out what your methodology is to
23 authenticate this to find out the foundation for
24 this, et cetera.

25 MR. SHAFFER: That's fine. It's the witness

1 A. Yes.

2 Q. Okay. We've reached individual donor names
3 and addresses and amounts.

4 A. Yes.

5 Q. Again, we found a document that is on the Web
6 site today in violation of the confidentiality policy
7 as you have testified to it, correct?

8 A. Yes.

9 Q. Do you want to keep going, Ms. Foley?

10 A. Not really. I mean, we can if you want.

11 Q. Well, you tell me. Are you convinced now
12 that there is cause for you as the former Registrar
13 of the Registry and the Attorney General's 30(b)(6)
14 designee to be deeply concerned about the Registry's
15 failure to maintain confidentiality to which the
16 Schedule B's are entitled?

17 A. Well, again, when you look at the scope, I
18 don't know how many there are here, but if you
19 compared it to how many records are out there, I
20 guess I would be somewhat -- I am somewhat concerned.
21 But, again, percentagewise I still think it would be
22 a very tiny percent.

23 Q. Close enough for horseshoes, is that your
24 testimony?

25 MS. GORDON: Objection, argumentative.

1 THE WITNESS: I don't know what that means.

2 So...

3 Q. MR. SHAFFER: Ms. Foley, you're looking at a
4 document that is 87 pages long, correct?

5 A. Yes.

6 Q. It has about 17 entries on each of those
7 pages, correct?

8 A. If you say so, yes.

9 Q. We're looking at a number that's above 1400,
10 correct? You can run some math on a calculator.

11 A. I believe your math is correct. 1400 out of
12 600, 700, a million records, I still think that's a
13 pretty small percent, in my view.

14 Q. You consider this consistent with the sworn
15 testimony that you've offered through three
16 declarations and throughout today's testimony.

17 A. Well, to the best of my knowledge, I didn't
18 know about all these, so, yes. I was surprised that
19 there is this many. I need to hire your programmer
20 that was able to identify to help us identify them.
21 Or not me personally anymore since I don't work there
22 anymore.

23 Q. You don't know of any such programmer
24 currently being on the staff, do you?

25 A. Not on ours.

1 Q. Does a reasonable public charity or its
2 donors have any less reason to be concerned than you
3 do about the State of California's policy with
4 respect to Schedule B's and public charities?

5 MS. GORDON: Objection, vague.

6 THE WITNESS: I'm not sure what you want my
7 opinion on, whether they should be -- I don't think
8 they should be worried, but...

9 Q. MR. SHAFFER: Do they have any less reason to
10 be worried than you do?

11 A. Less reason? Oh, probably. I mean, yes. I
12 don't have a charity. So...

13 Q. No, you don't understand my question.

14 A. I guess not.

15 Q. Okay. You said that you're concerned,
16 somewhat concerned about what we've seen today.

17 A. Yes.

18 Q. Do they have any less reason to be somewhat
19 concerned about what we've seen today?

20 A. I don't know because I don't know what their
21 concerns would be.

22 Q. Let's take one more look --

23 A. I would assume if they were really concerned
24 and they saw the information out there they would
25 have said something to us.

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

-----X

AMERICANS FOR PROSPERITY
FOUNDATION,

Plaintiff,

v.

KAMALA HARRIS, in her Official
Capacity as Attorney General of
the State of California,

Defendant.

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VIDEOTAPED DEPOSITION OF STEVEN BAUMAN

Los Angeles, California

October 29, 2015

9:41 a.m.

Reported by:
Kristi Caruthers, CLR, CSR 10560
Job No: 41445

STEVEN BAUMAN

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Steven Bauman

October 29, 2015

9:41 a.m.

Videotaped Deposition of STEVEN
BAUMAN, held at the offices of
Quinn, Emanuel, Urquhart & Sullivan
LLP, 865 South Figueroa, 10th Floor,
Los Angeles, California, pursuant to
notice, before Kristi Caruthers, CLR,
CSR Number 10560.

STEVEN BAUMAN

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A P P E A R A N C E S

ALSO PRESENT:

Scott McNair, Videographer

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 500, New York, NY 10123 1.800.642.1099

1 again: What do you mean by that?

2 A. There are certain transactions that
3 charities are required to give us either notice or
4 get our approval if they enter into this type of
5 transaction.

6 Q. And can you give me an example of
7 those types of transactions?

8 A. Mergers, sale of all or
9 substantially all assets, conversions, amendments,
10 dissolution.

11 Q. And so the charity submits some
12 information about it and then you kick off
13 something. I guess they're looking for your stamp
14 of approval about what they're planning to do is
15 A-OK by your standards?

16 A. Yes.

17 MR. CALIA: Objection; vague as to
18 "your."

19 BY MR. FORST:

20 Q. And that again ranges on an annual
21 basis? I've multiplied out 36 to 120, which is on
22 a slow month, three, on a busy month, about ten?

23 A. Yes.

24 Q. Okay. Did those transactions also
25 include self-dealing or potential self-dealing

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1 transactions with directors or officers?

2 A. We do get those occasionally. It's
3 pretty rare.

4 Q. Okay. So, then, separate and apart
5 from the index transactions, you talked about
6 other cases or investigations that your team
7 performs in L.A.; right?

8 A. Yes.

9 Q. And that was two to three a month?

10 A. Correct.

11 Q. Okay. And how would you -- how are
12 those different than index transactions?

13 A. We will open up a case. There will
14 be a reason we're opening up a case, and depending
15 on that reason, we will be requesting certain
16 documents of the charity or start doing an
17 investigation, look them up on the Internet, do
18 research that way, maybe talk to people.

19 Q. Okay. So, again, if I multiply
20 those out, then if you do roughly 36 a year over
21 the last decade, ten years, that's about 360
22 investigations and/or cases; correct?

23 A. That are being assigned.

24 Q. Right. And out of those 360, your
25 team identified five that implicated Schedule B at

1 some point along the way?

2 A. They identified five that, upon
3 looking at, they weren't able to recall a
4 schedule -- the use of Schedule B.

5 Going back to 2005, though, we
6 don't document when we use Schedule B or any of
7 the other schedules of 990 -- attached to the 990.
8 So that's why the ones -- examples that you have
9 are pretty much all current.

10 Q. They're all recent examples?

11 A. Yes.

12 Q. And so how recent are they?

13 A. Last year or two.

14 Q. But to be clear, you gave this
15 specific instruction and you yourself said, "Think
16 back to 2005 and identify anything that" -- "in
17 which you guys remember, recall or there's a
18 record of using Schedule B in connection with your
19 investigation"?

20 A. "Here are the cases that have been
21 assigned since 2005. Take a look at those, and do
22 you recall any specific use of Schedule B."

23 Q. Okay. Now, of the cases that were
24 assigned to you and/or your colleagues, roughly
25 the five, how many of those was Schedule B the

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1 impetus or the genesis or the originated document
2 that clued you in to an investigation needs to
3 take place?

4 A. To make sure I understand, you're
5 asking how many of those was Schedule B the reason
6 we kicked off the investigation.

7 Q. Said even better. That's exactly
8 what I'm asking.

9 A. I don't believe any of them.

10 Q. In how many of those five
11 investigations did you guys have the Schedule B in
12 unredacted form without having to ask for it from
13 either the charity themselves or the IRS?

14 A. I don't know.

15 Q. Could you figure that out?

16 A. I would have to go talk to the
17 auditors. I believe -- yeah, I don't recall.

18 Q. Of the five that were identified
19 from your group, how many did you specifically
20 identify?

21 A. One.

22 Q. So in that instance, was the
23 Schedule B the reason you kicked off the
24 investigation?

25 A. It was not.

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1 Q. And in that case, did you have the
2 Schedule B, or could you have gotten the
3 Schedule B from the registrar without having to
4 ask the charity or subpoena the charity for it?

5 A. I don't -- I don't recall asking
6 the charity for Schedule B, so we must have
7 already had it.

8 Q. Are you able to obtain unredacted
9 Schedule Bs from the IRS directly?

10 A. No.

11 Q. No?

12 A. No.

13 Q. Why does that make you chuckle?
14 I'm just curious.

15 A. It's been my experience that I
16 can't get anything from the IRS.

17 (Whereupon, Bauman Exhibit 2 was
18 marked for identification by the
19 deposition reporter and is attached
20 hereto.)

21 BY MR. FORST:

22 Q. Mr. Bauman, what's in front of you
23 has been marked Exhibit Number 2.

24 Do you recognize this document?

25 A. Yes.

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1 perhaps?

2 A. Correct.

3 Q. And any increased responsibilities
4 in connection with that?

5 A. Working more cases under the
6 supervision of General Auditor IIIs.

7 Q. Got it. And by "cases," those are
8 separate and apart from the index transactions?

9 A. Yes.

10 Q. Okay. And how long were you a
11 GA-II?

12 A. Approximately three years.

13 Q. Okay. And remind me -- I'm not
14 going to walk through it all -- when did you
15 become the supervisor, the current position that
16 you have?

17 A. 2001.

18 Q. 2001. And what was your title in
19 the year 2000, if you remember?

20 A. Investigative Auditor III.

21 Q. Okay. Do you have an understanding
22 when the IRS first created Schedule B and started
23 mandating that charities fill it out and file it
24 with the IRS?

25 A. Only based on something you said

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1 earlier, 2000.

2 Q. Okay. But you have no independent
3 understanding of that?

4 A. No.

5 Q. When did you first become aware
6 of -- if you weren't aware of Schedule B in 2000,
7 when did you first become aware of Schedule B,
8 generally?

9 A. I don't know that I could really
10 answer that in that we review the 990 as a whole
11 and all of the schedules attached to it. The
12 first time I actually saw a Schedule B and it was
13 an issue, I really don't know.

14 Q. Okay. Was this declaration dated
15 January 20, 2015 the first time that you ever put
16 down on paper and memorialized the utility and use
17 of Schedule B within your group?

18 A. There were drafts in another
19 declaration that I did. I don't recall if that
20 came before or after this one.

21 Q. Well, if they came after, then --
22 oh, drafts of this declaration; is that what
23 you're referring to?

24 A. Yes.

25 Q. Okay. So let me frame it this way,

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1 then: Besides this writing process associated
2 with this declaration, had you ever written down
3 or memorialized the utility and use of Schedule B
4 in your work as an investigative auditor?

5 A. No.

6 Q. Were you aware throughout the
7 course of your employment between 2000 and 2015
8 that most charities didn't file unredacted
9 Schedule Bs in California?

10 MR. CALIA: Objection; lacks
11 foundation.

12 THE DEPONENT: I am aware that
13 there are many charities that don't. I haven't
14 really sat down to try to -- or ever thought about
15 quantifying what percentage or most don't or most
16 do.

17 BY MR. FORST:

18 Q. Okay. But how are you aware of it?

19 A. When I'm reviewing the 990s, I'll
20 see it in some and I don't see it in all.

21 Q. Okay. And you've been reviewing
22 990s since the year 2000, at least; right?

23 A. Yes.

24 Q. Okay. In the year 2000, do you
25 ever remember speaking to a DAG, the attorney

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1 general, anyone else, saying, "You know what? We
2 need to go make sure that every charity is filing
3 their Schedule B in unredacted form"?

4 A. No.

5 Q. Okay. Did you do that in 2001?

6 A. No.

7 Q. Did you ever do that between the
8 years 2001 and 2005?

9 A. Approach a DAG and say we have to
10 make sure that every -- I have not.

11 Q. Okay. Have you ever done it?

12 A. Have I ever asked a DAG that we
13 need to make sure that every charity is --

14 (Counsel nodded.)

15 THE DEPONENT: No.

16 BY MR. FORST:

17 Q. Okay, meaning -- this talks about
18 the Schedule B providing critically important
19 information; right?

20 A. It talks about the 990 and all the
21 attached schedules providing critical information.

22 Q. Okay. So you don't think the
23 Schedule B provides critical information?

24 MR. CALIA: Objection; misstates
25 testimony, argumentative.

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1 THE DEPONENT: I do think
2 Schedule B provides critical information in some
3 cases.

4 BY MR. FORST:

5 Q. In some cases, okay.

6 But then it's fair to say
7 Schedule B is just one investigative tool that you
8 use among a wealth of documents and other
9 resources when investigating a charity?

10 MR. CALIA: Objection; vague.

11 THE DEPONENT: I'm more comfortable
12 saying it's one of the tools that we use. I don't
13 know that I want to -- about wealth of.

14 BY MR. FORST:

15 Q. Okay. But you felt, at least in
16 the years 2000, 2001, 2002, that you could perform
17 your audits conscientiously and with due diligence
18 without having unredacted Schedule Bs; right?

19 MR. CALIA: Objection; misstates
20 testimony.

21 THE DEPONENT: The answer to that
22 would be on a case-by-case basis. There are times
23 that we're looking at revenue to an organization
24 and Schedule Bs would -- are helpful.

25 ///

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1 if -- or hard for you to detect interested
2 transactions or self-dealing or other things;
3 right?

4 A. My understanding of your question
5 was if it's on Schedule B won't it be elsewhere,
6 and what I'm trying to say is not necessarily, and
7 that not necessarily may be intentionally or
8 otherwise.

9 Q. Okay. Again, but you're not
10 thinking of an example as you sit there and you
11 say that where if something was on Schedule B that
12 contradicted information in other places and it
13 wasn't until you looked at Schedule B that you
14 figured it out?

15 A. Not that I recall.

16 Q. Okay. So then going back to what
17 we were talking about, charities have to disclose
18 interested transactions not only between officers,
19 directors, key employees, but also between key
20 contributors and their family members; right?

21 A. I'm not -- I know they have to
22 disclose the self-dealing between officers,
23 directors, family members. I know they have to
24 disclose between donors. I'm not sure about the
25 donors' families.

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1 Q. You don't know one way or the
2 other?

3 A. Correct.

4 Q. Okay. We'll look at a schedule in
5 a little bit. Maybe that will clear it up.

6 But in any event, the point I'm
7 making is: Interested transactions between donors
8 and a charity are reflected in other places
9 besides Schedule B; in fact, that's not what
10 Schedule B is even about; right?

11 A. Schedule B is not about reporting
12 self-dealing transactions.

13 Q. Right.

14 A. Right.

15 Q. That comes from other places;
16 correct?

17 A. That comes from other places.

18 Q. Okay. And so if you have a
19 complaint and you have that information, couldn't
20 you again say, "We have an instance here where we
21 have some concerns about self-dealing, about
22 transactions. I have the particular dollar
23 amount. I know what's going on. Charity, give me
24 the identity of that particular contributor or
25 person so I can investigate this."

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1 You could do that; right?

2 A. We could do that, but, again, that
3 then raises my -- the concern I would have about
4 that, to be honest, is even bigger than the other
5 scenario we gave, because in this case if we
6 contact the charity and said, "We want the
7 information on this particular donor," that donor
8 in this scenario that we're talking about has his
9 own legal issues now --

10 Q. Right.

11 A. -- and is more likely to -- well,
12 will be coached and is less likely to be
13 forthcoming.

14 Q. Okay. But, again, that concern is
15 hypothetical; right? Because I mean in your
16 personal experience, it's never happened to you?

17 A. Well, but it has happened.

18 Q. One time.

19 A. Well, that we are aware of.

20 Q. Okay. But one time.

21 And we talked about the hundreds
22 and hundreds of investigations that you do, you're
23 aware of, sitting here today, of one instance?

24 A. Well, the hundreds and hundreds of
25 investigations that we're talking about are going

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1 So by the time it gets to us and
2 we're looking at the 990s, we're already involved.
3 I mean there's a reason we're looking at them.

4 Q. Right.

5 A. So we don't really go to the
6 registry and say, "There's no Schedule B, go get
7 it." We would -- if we wanted the Schedule B at
8 that point, we would contact the charity itself.

9 Q. Okay. Well, I want to go back to
10 my question because I think it was a little bit
11 different and I just said you've never personally
12 gone to a DAG or the AG, him or herself, and said,
13 "This charity hasn't filed its Schedule B. We
14 need to go out and get it"?

15 A. I have.

16 Q. To a deputy attorney general you've
17 said that?

18 A. To a DAG, yes.

19 Q. Okay. Who?

20 A. Sandra Barrientos,
21 B-a-r-r-i-e-n-t-o-s.

22 Q. Okay. And when was that?

23 A. Within the last year.

24 Q. And anytime before that have you
25 done the same thing?

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1 A. Not to my recollection.

2 Q. You said something in your earlier
3 answer where you said that by the time you get
4 involved, it's already -- an issue's come to you
5 and been flagged, et cetera; right?

6 A. Yes.

7 Q. Your declaration says that the
8 Form 990 in totality, including Schedule B,
9 provide critical information for auditing and
10 investigating charities; right?

11 A. Yes.

12 Q. Okay. Have you ever, before
13 something's come to you, said just that to the
14 registry: "In order for us to do our job
15 effectively, you need to be making sure that
16 you're getting the entire form and every schedule
17 before it comes to us, or else we can't do as good
18 of a job as we otherwise might be able to do"?

19 A. I have not had that conversation.

20 Q. Okay. Has anything prevented you
21 from having that conversation?

22 A. No.

23 Q. Under what circumstances can you
24 access -- well, you understand that a Schedule B
25 that includes names and addresses is, quote,

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1 unquote, "a confidential document" within the
2 registry; right?

3 A. Yes.

4 Q. It's not made available for public
5 consumption through the website?

6 A. Correct.

7 Q. Okay. So in what scenario can you
8 go access a confidential Schedule B if you want to
9 see it or need it?

10 A. The registry keeps a database that
11 we have access to called -- we call it MyLicense
12 Office, and they keep public records and
13 confidential records on there and we can log in
14 and see what's in there.

15 Q. Okay. What was that called again,
16 I'm sorry, the database?

17 A. MyLicense Office.

18 Q. MyLicense Office?

19 A. And I believe that's with the
20 acronym -- we call it MLO.

21 Q. MILO?

22 A. MLO, M-L-O.

23 Q. Thank you.

24 And that, to your understanding, is
25 separate and apart from the database that's

1 improper interested transactions with donors or
2 their family members, all I'm saying is, one place
3 you could go look to find that information is
4 Schedule L.

5 A. My concern in the question is this
6 would disclose the transaction between a charity
7 and the money going out to the interested party.

8 I don't know that by looking at
9 this by itself would give us an indication that
10 the donor is really connected to this party, the
11 recipient.

12 Q. Okay. So what you're saying is, "I
13 see here if the charity is saying they're giving
14 money to some entity; what I don't know is whether
15 that entity is also affiliated with a donor on
16 Schedule B"?

17 A. Correct.

18 Q. Okay. What I'm asking, though, is
19 if there's a transaction here that jumps out at
20 you to say, "I need to look at this transaction
21 further," you don't need to know the identity of
22 every donor listed on Schedule B to the extent a
23 charity lists 5,000-plus donors.

24 You don't need to know everybody;
25 right?

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1 A. We don't need to know everybody.

2 Q. In fact, you might only need to
3 know one person on that entire list?

4 A. Part of the problem is that we
5 don't know what we need to know until we know what
6 we need to know.

7 Q. Well --

8 A. So I mean whether there's one or a
9 hundred people on Schedule B, just -- I mean
10 looking at this in and of itself, the fact that,
11 you know, there are names listed on here, I don't
12 know if that by itself is going to really raise an
13 awful lot of red flags.

14 Q. Right. But what's not going to
15 raise flags in and of itself about an interested
16 party loan is Schedule B. That's not even about
17 interested party loans or transactions or
18 anything --

19 A. Correct.

20 Q. -- right? But if there is a red
21 flag being raised that causes you to look into it,
22 Schedule B isn't the triggering document for that?

23 A. It could be the triggering document
24 in conjunction with, for example, Schedule L.

25 Q. Okay. But, again, to the extent

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1 that you recall or you went back and you looked
2 at, you know, ProLaw records, Schedule B has never
3 been that triggering document that kicked off an
4 investigation?

5 A. Not that I recall.

6 Q. Okay. And so just what I'm driving
7 at, you understand a little bit in this case is
8 it's a balancing test: How much do you need that
9 information relative to the anonymity and the
10 desire of donors not to be identified; right?

11 Do you understand that?

12 MR. CALIA: Objection; calls for a
13 legal conclusion.

14 THE DEPONENT: I understand your
15 argument.

16 BY MR. FORST:

17 Q. Well, it's not really an argument.

18 I'm saying: Do you understand why
19 you gave the declaration that you gave in this
20 case?

21 A. Yes.

22 Q. Okay. And why was that?

23 A. Because your clients want to
24 withhold their identity on Schedule B in
25 disclosing it to our office.

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1 Q. Right. And do you know why?

2 A. Well, I assume because they're
3 concerned that there's some harm that may come to
4 them.

5 Q. Okay. So then the question is
6 whether does the benefit of having this
7 information on your side outweigh the potential
8 risk or harm from disclosure on the other side;
9 fair?

10 MR. CALIA: Objection; calls for a
11 legal conclusion.

12 THE DEPONENT: If you're asking me
13 if there's a balancing act there, I understand the
14 argument that there is, your argument. I don't
15 personally buy it.

16 BY MR. FORST:

17 Q. You don't personally buy it. Okay,
18 fine.

19 But I'm saying -- I'm not asking
20 for a legal; I'm just saying that has to make
21 sense.

22 As a reasonable minded, bright
23 person sitting there, you understand the tension;
24 right?

25 MR. CALIA: Objection;

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1 Q. Right. Then, conceivably, you
2 could have a Schedule B with nobody for a
3 perfectly legitimate charity?

4 A. Yes.

5 Q. So I guess that in and of itself
6 isn't all that telling; right?

7 A. The fact that there is a Schedule B
8 with nothing reported on it by itself may not
9 necessarily be all that telling.

10 Q. Right. So do you know whether
11 these charities checked the box that said they
12 were filing -- they needed to submit a Schedule B;
13 that they were receiving funds from, let's say,
14 the special exception 33 percent rule?

15 A. I do not know.

16 Q. Again, going back, do you know what
17 triggered this investigation?

18 A. No.

19 Q. Okay. For any of these, do you
20 know whether it was necessary to consult the
21 Schedule B in order to successfully complete the
22 audit?

23 A. I'm not really sure I understand
24 the question in that we use Schedule B in various
25 ways and assisted in completing the audit, and if

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1 you're asking me if you had taken away the
2 Schedule B if that would have stopped us from
3 doing the audit, I don't know that it would have
4 stopped us. We would have continued to work, and
5 whether we were able to connect the dots
6 otherwise, I -- I don't know how to answer that.
7 Maybe, maybe not.

8 Q. What about the one you worked on,
9 Number 7, this one where Schedule B confirmed that
10 donations were coming from the public, which I
11 think again, by definition, that's what Schedule B
12 means.

13 A. We probably could have completed
14 that without it.

15 Q. Okay. Are you ever aware of an
16 investigation that your team or you have done
17 where, upon consultation of the Schedule B, that
18 resolved the need or resolved the investigation?

19 In other words, you looked at the
20 Schedule B and that told you, "You know what?
21 There's nothing here. We don't need to continue
22 with an audit or an enforcement action"?

23 A. Would looking at Schedule B stopped
24 us from doing an investigation. Are you asking me
25 if that's possible it could have happened, or am I

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1 aware --

2 Q. Are you aware.

3 A. -- of any specific cases?

4 No, I'm not aware of it.

5 MR. FORST: Okay. Last one. This
6 is 12?

7 DEPOSITION REPORTER: Yes.

8 (Whereupon, Bauman Exhibit 12 was
9 marked for identification by the
10 deposition reporter and is attached
11 hereto.)

12 BY MR. FORST:

13 Q. Mr. Bauman, Exhibit Number 12 looks
14 like an E-mail from Mr. Hugh Jones on May 29th,
15 2014 to the Listserv charity with the number
16 2@ftc.gov, of which you are included underneath
17 that as a recipient on that list, sir.

18 Do you recognize this E-mail?

19 A. No.

20 Q. You don't recall receiving it?

21 A. I don't read all the Charity 2
22 E-mails that I get.

23 Q. Do you filter them to a junk
24 folder?

25 A. I don't read all of the charity --

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1 I do not filter them to a --

2 Q. I see.

3 A. -- a junk folder, but I don't read
4 very many of them.

5 Q. Now, do they come every day? Is it
6 routine that you'll get one or more E-mails
7 through this Listserv on a daily basis?

8 A. Yes.

9 Q. It is?

10 A. Yes.

11 Q. And how many, generally?

12 A. Generally, I would say -- I don't
13 know, three a day. Could be more on a busy day.

14 Q. Do you ever send anything out via
15 this Listserv?

16 A. I believe probably about five years
17 ago I think I sent one.

18 Q. Okay. So this is not a Listserv
19 that you actively participate in?

20 A. It is not.

21 Q. Okay. And what's the purpose of
22 it, this E-mail Listserv? Why do you guys have
23 it?

24 A. It was set up for other attorney
25 generals or entities that regulate charities in